

# SENATE BILL REPORT

## SB 6181

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As Passed Senate, February 13, 1996

**Title:** An act relating to requirements of a petition for deferred prosecution.

**Brief Description:** Clarifying the waiver of jury trial rights upon acceptance of a deferred prosecution.

**Sponsors:** Senator Smith.

**Brief History:**

**Committee Activity:** Law & Justice: 1/18/96, 1/24/96 [DP].  
Passed Senate, 2/13/96, 48-0.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Smith, Chair; Fairley, Vice Chair; Goings, Hargrove, Haugen, Johnson, Long, McCaslin, Roach and Schow.

**Staff:** Lidia Mori (786-7755)

**Background:** A person charged with a misdemeanor or gross misdemeanor may petition a court of limited jurisdiction to be considered for a deferred prosecution program. A person is eligible for a deferred prosecution once in a five-year period if it is in connection with a driving under the influence of alcohol or drugs charge. Before an order is entered deferring prosecution, the person seeking the deferred prosecution is required to sign an acknowledgement of rights, a stipulation to the admissibility of the written police report, and an acknowledgement that the statement will be entered as evidence and used to support a finding of guilty if the deferred prosecution is later revoked. If a deferred prosecution program is successfully completed, the court will dismiss the pending charges.

The Legislature has found that deferred prosecution is an alternative to punishment for persons who will benefit from treatment. It has also found that some people have sought deferred prosecution but have been unable or unwilling to cooperate with treatment requirements. Some of these people have escaped punishment because of the difficulties of resuming prosecution at a later date.

Many district courts in Washington require a person seeking a deferred prosecution to sign a form which not only includes a stipulation to the admissibility of the written police report and an acknowledgement that the statement will be admitted as evidence to be used to support a finding of guilt, but also an acknowledgement that the person is giving up the right to a jury trial, to hear and question witnesses, to call witnesses in one's behalf, and to testify or not testify. A recent decision by the Court of Appeals, Division III, found that the Spokane County District Court exceeded its authority by imposing the waiver of trial rights as a condition of participation in a deferred prosecution program. This opinion conflicts with

an earlier decision from the Court of Appeals, Division I, which held that the law does require a defendant to waive the right to raise defenses and if the deferred prosecution is revoked, the court must "assess the defendant's guilt solely on the basis of the stipulated police report".

**Summary of Bill:** Before an order of deferred prosecution is entered, the person seeking the deferred prosecution must execute a statement acknowledging his or her rights. In addition, the person must acknowledge and waive the following rights: to testify, to a speedy trial, to call witnesses to testify, to present evidence in one's own defense and to a jury trial. The person must also stipulate not only to the admissibility of the facts contained in the police report but also to their sufficiency.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** In 1985, there was a major effort to eliminate deferred prosecution. The language reflected in this bill was worked out as a compromise. This bill will conform the law to the practice in district courts. The district and municipal courts support the bill.

**Testimony Against:** None.

**Testified:** Jim Kaufman, Whitman Co. prosecuting attorney (pro).